

## **REMARKS/ARGUMENTS**

### **Summary of the Office Action:**

Claims 1-14, 16, 18, 20, 21, 26, 27, and 29 are pending in the application, prior to amendment.

Claims 15, 17, 19, 22-25, 28, and 30-49 have been withdrawn from consideration.

Claim 12 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-9, 11, 16, 18, 20, 21, 26, 27, and 29 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Pat. No. 6,589,208 to Ewers et al. ("Ewers et al.").

Claims 13 and 14 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ewers et al. in view of U.S. Pat. No. 6,746,460 to Gannoe et al. ("Gannoe et al.").

Claim 10 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Applicant's Response:**

A. With reference to the 35 U.S.C. § 112, second paragraph, rejection of claim 12 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, Applicants have amended claim 12 to depend from claim 11 to correct a typographical error and to address the antecedent basis.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claim 12 under 35 U.S.C. § 112, second paragraph.

**B.** With reference to the 35 U.S.C. § 102(e) rejection of claims 1-9, 11, 16, 18, 20, 21, 26, 27, and 29 as allegedly being anticipated by U.S. Pat. No. 6,589,208 to Ewers et al. (“Ewers et al.”), claim 1 has been amended to clarify the claimed invention to recite “wherein the sleeve is further adapted to be ejected from a delivery device when expanded into the deployed profile” and claim 16 has been similarly amended to recite “wherein the shank is adapted to be ejected from a delivery device when expanded into the deployed profile”. (See specification, [0050].)

As shown and described, the anchor is ejected or deployed such that the anchor is removed from the delivery device. On the other hand, the device of Ewers et al. shows and describes a catheter assembly which remains connected or attached to its anchoring device. (Ewers et al., 5: 56-61; 10: 58 – 11: 8.) Furthermore, Ewers et al. describes its anchoring device as being “optimized for a semi-permanent/implantable drainage catheter for several reasons.” (Ewers et al., 11: 9-11.) As further described by Ewers et al., “it is necessary for the catheter to be temporarily anchored in the body cavity to allow the desired procedure to be completed.” (Ewers et al., 1: 23-25.) Therefore, the anchoring device of Ewers et al. cannot be said to have a sleeve or shank adapted to be ejected from a delivery device when Ewers et al. describes a device where its anchoring device must remain attached to its catheter.

Therefore, independent claims 1 and 16, as amended, are patentable over Ewers et al. for at least these reasons. Moreover, dependent claims 2-14 and new claims 50-53 (which depend ultimately from claim 1) and dependent claims 18, 20, 21 and new claims 54-56 (which depend

ultimately from claim 16) are patentable over Ewers et al. for at least the same reasons as claims 1 and 16.

Additionally, Ewers et al. fails to show or describe a device where the sleeve is configured so that application of tension on the suture approximates the distal bushing to the proximal bushing, as suggested in the Office Action (Office Action, p. 3, ¶ 7.) Rather, Ewers et al. clearly discloses its device as having an anchor which is expanded by the application of a resistive force from the surrounding tissue when pulled proximally. The suture (string 34) is not tensioned to approximate the distal bushing to the proximal bushing, but instead is tensioned to prevent the movement of the bushing once the anchor has already been expanded. (Ewers et al., 7: 55-67.) The suture (string 34) is not shown or described by Ewers et al. to approximate any structures but is described instead as a stopping mechanism.

With respect to independent claim 26, the plurality of struts as claimed are described where “tube 77 having a plurality of longitudinal through-wall slots 78 to create struts 79.” (Specification, for example, [0067] & Figs. 9A-9B.) On the other hand, the Office Action states that Ewers et al. teaches an anchor having a reconfigurable member which “comprises a plurality of struts affixed to the distal end of the shank/fixation point.” (Office Action, p. 3, ¶ 8.) However, Ewers et al. fails to show or describe any such plurality of struts utilized in its anchor structure; rather, Ewers et al. describes an anchor device utilizing a mesh where “the bulb 32 is formed of a heat-settable material, such as polyester, and provided in the configuration of an open mesh so as to be liquid permeable.” (Ewers et al., 6: 40-43.)

Furthermore, a mesh may contain numerous interwoven fibers which are generally known to interlace one another in a pattern, but these fibers cannot be said to be “parallel to one

another”, as claimed, as some fibers may be parallel but many other fibers cannot be parallel by the nature of a mesh structure.

Therefore, independent claim 26 must be patentable over Ewers et al. for at least these reasons. Moreover, dependent claims 27, 29 and new claims 57-61 (which depend from claim 26) are patentable for at least the same reasons as claim 26.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 1-9, 11, 16, 18, 20, 21, 26, 27, and 29 under 35 U.S.C. § 102(e) to Ewers et al.

C. With reference to the 35 U.S.C. § 103(a) rejection of claims 13 and 14 as allegedly being unpatentable over Ewers et al. in view of U.S. Pat. No. 6,746,460 to Gannoe et al. (“Gannoe et al.”), claims 13 and 14 depend ultimately from independent claim 1 and are patentable over Ewers et al. Therefore, Gannoe et al. or any other reference in combination with Ewers et al., fails to cure the defects of Ewers et al. for at least the reasons above.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 13 and 14 under 35 U.S.C. § 103(a) under Ewers et al. in view of Gannoe et al.

D. With reference to the objection to claim 10 as being dependent upon a rejected base claim, Applicants acknowledge the allowable subject matter with thanks. However, in view of the remarks set forth above, Applicants respectfully request the reconsideration and allowance of all claims therefore.

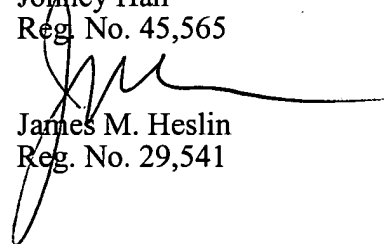
### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

Johny Han  
Reg. No. 45,565

By:  James M. Heslin  
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
60676723 v1